

**Town of Milford
Zoning Board of Adjustment Minutes
September 4, 2014
Case #2014-14
Special Exception
Bill King**

Present: Zach Tripp, Chairman
Fletch Seagroves, Vice Chair
Laura Horning
Mike Thornton
Joan Dargie

Excused: Katherine Bauer – Board of Selectmen's representative

Secretary: Peg Ouellette

The applicant, Bill King, of 223 South Street Properties, LLC, owner of Map 29 Lot 95 at 223 South St in the Commercial District, is requesting a Special Exception from Article V, Section 5.05.5:B to allow a side setback of 10.5 feet for an existing house where 15 feet is required and a rear setback of 1.6 feet for an existing garage where 15 feet is required on proposed lot Tax Map 29 Lot 95-1.

Minutes approved on September 18, 2014

Zach Tripp, Chairman, opened the meeting and informed all of the procedures for the meeting. He read the notice of hearing into the record. The list of abutters was read. No abutters were present. Bill King, owner of 223 South Street, was present.

He then invited the applicant forward to present his case.

B. King stated most of this was regarding the residential portion. There was a small garage with a retaining wall. The new line would go across the back setback against the retaining wall along the back side of the garage facing the shop

B. King said there was a small alcove from the bedroom in the side setback. He also mentioned a stoop previously used as access to the house that is currently being used as a landing for the fire escape stairs that comes within 1.5 ft from the property line.

Z. Tripp clarified that it was 10.5 with 15 required and 1.6 at the garage where 15 was required.

B. King said that was correct.

L. Horning asked the location of the retaining wall.

B. King explained that it was near the back of the small garage. The foundation wall was approximately 4 ft high and then extending from that, it became part of the garage foundation.

L. Horning inquired if that was to adjust for the topography, to keep the lot from eroding.

B. King said yes.

L. Horning asked if it would run 1 ft from the outside of that retaining wall.

B. King agreed.

Z. Tripp asked if there were any plans to put a fence around the new residence or around the back to separate it because looking at the aerial, everything seems to run together.

B. King said no. The way the shop was set back, it would probably not be good advertising.

L. Horning said they could put two panels behind the garage and follow the shape. They will still have to address signage. The Planning Board will ask what he plans to do to buffer it. Was there a reason he couldn't go within 3 ft. past the garage and create a buffer for the residence?

B. King replied they could do 3 ft but it would still violate the setback. If necessary he could have Meridian change the line.

L. Horning said the Planning Board might recommend that.

J. Dargie asked if 1.5 ft from the retaining wall would allow someone to stand on the other side to repair it if needed.

B. King said he thought that was the case because they could stand a ladder and paint it if necessary.

J. Dargie said due to the location of the retaining wall, that land was not necessarily useful to the person that has the house.

B. King said the parking lot pavement went right up against that.

J. Dargie said you couldn't mow the lawn or anything. She now understood the easements because with only 9.5 ft if they wanted to get back to the house and side of the garage they'd have to go down the driveway.

B. King said it was 20 ft to the front of the property; they could steal five ft.

M. Thornton asked how the 1.6 was arrived at.

B. King said he'd have to ask Meridian that.

L. Horning said she didn't know if the Planning Board would want an easement around the property. A 4 ft easement would give the prospective homeowner access around the property and the Planning Board may want to address that.

M. Thornton said you could keep the line at 1.6 ft and have an easement for the whole property.

L. Horning said that was her point.

Z. Tripp said all that still requires a special exception for the setback.

J. Dargie inquired about the dimensions from the back of the house to the back of the property.

B. King said he believed it was 15.1 ft.

Z. Tripp asked for questions from the Board.

Z. Tripp opened the meeting for public comment. There were none. He closed the public portion of the meeting.

He asked the applicant to read his application into the record.

1. The proposed use is similar to those permitted in the district because:

The proposed use is to allow a reduced setback of an existing structure, required for a subdivision of one parcel into two parcels, splitting of the existing commercial use from the existing residential use. The two parcels are and would remain in the commercial zone. There is no change in use, and the current uses are entirely similar to those both permitted, and actually in place, in the zone.

2. The specific site is an appropriate location for the proposed use because:

The site is currently a mixed use, with both commercial and residential uses on the same parcel. There is no intended change or intensifying of the two uses, rather just a subdivision of those two uses onto two separate parcels. The existing uses are both permitted, and thus the uses are appropriate for the site.

3. The use as developed will not adversely affect the adjacent area because:

There is no new development or use, just an existing wall underneath a structure that will sit within the setback of the proposed subdivided parcel. With no new development, there will be no adverse effect on any adjacent area.

4. There will be no nuisance or serious hazard to vehicles or pedestrians, because:

The existing wall is not a nuisance or hazard, and changing the lot lines per the proposed subdivision will not create a nuisance nor a hazard.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

The existing wall is properly provided for, and no new facilities will be required. The wall is a passive use and is not, strictly speaking, subject to any form of operation. Rather, it has supported, and will continue to support, the garage above it.

M. Thornton asked how it could be both a retaining wall and a passive use.

B. King said it was the foundation wall that extended a little beyond the side of the garage. The retaining wall was a portion and part of it was considered a foundation.

Z. Tripp asked for any further questions for the applicant. The other members had none.

Z. Tripp commented that District C Commercial under 5.05.5:B area requirement is each structure shall be 15 ft from side and rear property line. This lot now has a multi-family on it which was allowed by 5.05.5:B . He read from the section of the ordinance. He said the yard requirements fall under Residence B under 5.03.6:B requiring 15 ft., so they were both the same.

J. Dargie asked whether the garage was considered an accessory structure.

Z. Tripp said the ordinance stated accessory structures 120 SF or less should have a different setback, which was 6 ft. He asked if the garage was bigger than 120 SF.

B. King said it was.

A. The proposed use is similar to ones used in the district?

J. Dargie – yes, it is the same as it always has been there.

M. Thornton – yes.

L. Horning – yes.

F. Seagroves – yes.

Z. Tripp – yes, the new lot will remain unchanged.

B. Is the specific site an appropriate location for the proposed use?

M. Thornton- yes. It can't be moved. It is there, and they just subdivided it and set up conditions.

J. Dargie said the question asked about the proposed use, and the use already existed. They were really discussing the setbacks for the current use. Her answer was yes. The setback is not going to interfere with neighboring uses of the other property. It will take back a little bit. A lot of it drops off, but she didn't feel people would go back there and use it, so she felt it was appropriate.

L. Horning agreed, adding that this property was all married as one. The residence property just subdivided doesn't know its own the setback. They just separated the property. It was a portion of the property for many years and doesn't know any other element to itself than being married to the commercial use. In this case, this specific site is appropriate location for the proposed use because the site is a mixed use and they are both on the same parcel. It is just a question of setback in delineating one property from the other.

F. Seagroves said they talk about appropriate location. They just subdivided the property and although it doesn't meet the qualifications, they can't make him move the garage.

Z. Tripp agreed with the rest of the Board. It is a unique property. It is subdivided in a reasonable manner. There isn't 30 ft between the business and the garage. It is the same on the other side – fairly close at 10 ft. This is an appropriate way to subdivide the location of the location of the house to the business and the house to the driveway.

C. Would the use as developed adversely affect the adjacent area?

L. Horning didn't believe it would affect the adjacent area.

F. Seagroves – yes. He didn't think it would affect abutters by changing the property line.

M. Thornton – yes. There was no other logical way to go.

J. Dargie – yes. The way the line is drawn, if the other property decided to build, there was plenty of room to work within the setback.

Z. Tripp said he struggled with this. He didn't think it would affect adjacent property on either side of across the street. His concern was these lots interacting with each other ten to twenty years down the road with a new person owning the commercial and a residential owner that didn't know each other. Granted, that relationship has existed for quite some time but new owners may not care about that history. He felt that the Planning Board had greater expertise on how to manage that relationship, whether an easement or fence or nothing. They can approve it with pre-existing relationship. Now having two different owners this where he would want to see some condition of Planning Board approval for the setback because they already have one for the commercial lot. They go hand in hand.

M. Thornton asked what documents were needed to describe the property lines, easement and when it may be used.

F. Seagroves said there would have to be a new deed for the two properties and that information would go into the deed. Further discussion ensued.

M. Thornton said currently it is two lots with the same owner.

Z. Tripp said it won't always be.

L. Horning said the Zoning Board could put a condition to state that, the property owner give an easement for the prospective residential owner, given that they only have a 2 ft to access the back of the property. It is a reasonable expectation.

Z. Tripp said the question is how will it affect the adjacent commercial property.

D. There will be no nuisance or serious hazard to vehicles or pedestrians.

M Thornton – There won't. It is the same as it was before.

J. Dargie – yes, there will be no nuisance.

L. Horning – agreed.

F. Seagroves – there will be no nuisance or serious hazard to vehicles or pedestrians. All the structures have been there.

Z. Tripp agreed. The structures in use have been there. Reduction of setback on the side by 5 ft, that entrance has already been used. The Planning Board will look at that commercial lot.

E. Adequate appropriate facilities will be provided for the proper operation of the proposed use.

M. Thornton – yes.

J. Dargie – yes

L. Horning – yes; however, the applicant stated the existing wall was properly provided for and no new facilities were required. That isn't entirely true, maintenance will be needed. An easement could address this for both properties. This is something she would like to ask the Planning Board to address the ZBA could put that condition on the approval.

F. Seagroves agreed.

M. Thornton felt the ZBA needed to be more specific to avoid squabbles. The required setback is 15 ft, so maybe there could be a 15ft easement for extraordinary use.

Z Tripp said he believed there were no new facilities required as they are all pre-existing structures and change in setback doesn't change that. Also, he would defer any easement language to the Planning Bd.

L. Horning said she wasn't sure the Planning Board could recommend or subject their approval to an easement. The Planning Board could recommend the property line be moved, but the ZBA can say we would like an easement and not give the special exception without an easement.

Z. Tripp asked if she was willing to make it an easement or some sort of equivalent.

L. Horning said yes.

Z. Tripp said the easement will benefit the commercial business that will have a structure 1.6 ft from their property line and will ensure that the owner of the residential property will have enough room to get behind their structure.

L. Horning made a motion to add the condition that approval of the application be subject to either an easement or moving the property line to allow adequate access to maintain the garage behind with a minimum of 4 ft. Discussion pertaining to the amount of room needed for access and to maintain the wall followed.

Z. Tripp added it could also be pending Planning Board review for any potential methods of buffering between the two properties. There were no objections from the Board.

Z. Tripp read the amended motion: Condition approval would be subject to an easement or a property line minimum setback of 4 ft for access to the back of the residential property owner's garage and subject to Planning Board review of a potential buffer between the commercial use and the garage on the residential lot.

F. Seagroves seconded the motion.

Vote on the motion:

L. Horning – yes, F. Seagroves – yes, J. Dargie – yes, M. Thornton – yes, Z. Tripp – yes.

Z. Tripp proceeded to the vote on the special exception.

Is the exception allowed by the ordinance?

F. Seagroves – yes, M. Thornton – yes, L. Horning – yes, J. Dargie – yes, Z. Tripp – yes

Are the specific conditions present under which the exception can be granted?

M. Thornton – yes, L. Horning – yes, J. Dargie – yes, F. Seagroves – yes, Z. Tripp – yes with conditions

J. Dargie made the motion to approve Case #2014-14

M. Thornton seconded the motion.

Final Vote

J. Dargie – yes, M. Thornton – yes, F. Seagroves – yes, L. Horning – yes, Z. Tripp – yes

Case #2014-14 was approved by a unanimous vote.

Z. Tripp informed applicant his request had been approved with special conditions; subject to an easement or a property line minimum setback of 4 ft for access to the back of the residential property owner's garage and subject to Planning Board review of a potential buffer between the commercial use and the garage on the residential lot. He reminded applicant of the 30-day appeal period.